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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )

Existing Television Broadcast Service )

MM Docket No. 87-268

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REPLY OF BELL ATLANTIC<sup>1</sup>

Bell Atlantic respectfully submits these reply comments to address three limited issues in this proceeding. First, as Turner Broadcasting points out, the Commission here should not extend must carry requirements to digital programming or services offered over ATV spectrum. On the record here, there has been no showing of a "factual necessity for must-carry in the context of digital broadcasting."<sup>2</sup> Absent such a showing, it would be premature to extend must carry to the digital world. Moreover, should the Commission ultimately decide to impose such must carry obligations, it should limit the applicability of such obligations to carriage of a single channel of programming equivalent to the analog NTSC signal cable operators are required to carry today.

<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., and Bell Atlantic-West Virginia, Inc.

<sup>2</sup> Comments of Turner Broadcasting System, Inc., filed Nov. 20, 1995 ("Turner Broadcasting Comments") at 6.

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Second, as the broadcast industry itself recognizes, broadcasters should be required to pay for that portion of the ATV spectrum that they use to offer services other than a digital version of their existing NTSC signal.

Third, the Commission should plan its initial spectrum allocations with the end game in mind, so that large, contiguous portions of spectrum can be recovered in the future for use nationwide to provide new services.

**I. Any Must Carry Obligations Should Extend Only to the ATV Equivalent of Existing NTSC Programming**

As an initial matter, it is premature for the Commission to impose any must carry requirements at this time.<sup>3</sup> The Supreme Court is poised to consider again the constitutionality of the current "must carry" rules after raising significant concerns based on the previous record.<sup>4</sup> Whatever the result in that case, at a minimum it is clear that the existing requirements cannot be extended to the digital world absent a showing of the factual

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<sup>3</sup> See, e.g., Turner Broadcasting Comments at 1-7; Comments of National Cable Television Association ("NCTA Comments") filed Nov. 20, 1995 at 1-8; Comments of Cable Telecommunications Association, filed Nov. 20, 1995 ("CATA Comments") at 1-9; Comments of Motorola, filed Nov. 20, 1995 ("Motorola Comments") at 12; Comments of Intermedia Partners, filed Nov. 20, 1995 ("Intermedia Partners Comments") at 3-4; Comments of UVTv, a division of United Video Satellite Group, filed Nov. 20, 1995 ("UVTv Comments") at 4-5; Comments of Alliance for Community Media, filed Nov. 20, 1995 at 28.

<sup>4</sup> See *Turner Broadcasting System, Inc. v. FCC*, 114 S.Ct. 2445 (1994), on remand, *id.*, No. Civ. A 92-2247 (D.D.C. Dec. 12, 1995), cert. pending, 64 U.S.L.W. 3438 (January 2, 1996).

necessity for must carry in this context. The record in this proceeding, however, provides an inadequate basis for the Commission to find at this time that must carry obligations are required in the context of digital broadcasting in order to further the goal of protecting local over-the-air broadcasting.<sup>5</sup>

In any event, the vast majority of commenters agree that, if the Commission eventually concludes that must carry obligations should apply to programming on ATV channels, any must carry obligations should not extend to new services that are offered to the public for a charge.<sup>6</sup> Even the broadcasters who filed jointly in this proceeding concede that any such requirement should "exclude ancillary and supplementary subscription services."<sup>7</sup>

In fact, any such obligation should extend only to the

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<sup>5</sup> See Turner Broadcasting Comments at 5-7 and n. 14 ("[N]either the legislative history of the 1992 Cable Act nor the record presented in this ATV proceeding demonstrates that the Government has a substantial and legitimate interest in extending the protections afforded by must-carry to the system of digital television broadcasting..."); see also, NCTA Comments at 4-13.

<sup>6</sup> See, e.g., Comments of Media Access Project, et. al., filed Nov. 20, 1995 at 35-36; Comments of Ameritech New Media Enterprises, Inc., filed Nov. 20, 1995 ("Ameritech Comments") at 6-7; UVTB Comments at 3-4; Intermedia Partners Comments at 4-6.

<sup>7</sup> Broadcasters' Comments on the Fourth Notice of Proposed Rulemaking, filed Nov. 20, 1995 ("Broadcasters' Comments") at 31.

single digital programming equivalent<sup>8</sup> of the NTSC programming that is subject to existing must carry obligations (and related programming material that is physically part of that primary broadcast signal, such as closed captioning).<sup>9</sup> It should not include entirely new services, whether subscription-based or other non-broadcast (e.g., voice, data or paging) services.

Requiring carriage of all programming and services offered by broadcasters over the ATV spectrum would exceed the Commission's statutory authority.<sup>10</sup> In enacting the 1992 Cable Act provisions imposing must carry obligations, Congress sought to protect provision of free, over-the-air programming by local broadcasters -- a goal not furthered by mandatory carriage of services for which viewers must pay or of non-broadcast services.

Moreover, the statutory provision which gave rise to the Commission's inquiry concerning the applicability of must carry

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<sup>8</sup> In order for digital video delivery systems to comply with any such must carry requirements, the broadcaster should be required to deliver an unencrypted digital MPEG-2 bit stream representing only the programming content subject to the "must carry" requirement to the video delivery system operator; not a multiplexed ATV channel with multiple bit streams -- some of which are not subject to the must carry requirements. In addition, manufacturers of television receivers should be encouraged to provide at least an optional direct digital interface, defined by industry standards committees, rather than requiring an analog feed.

<sup>9</sup> See UVTV Comments at 4-5; Intermedia Partners Comments at 5-6.

<sup>10</sup> See Intermedia Partners Comments at 5-7.

requirements in the digital world<sup>11</sup> raises difficult questions of statutory interpretation.<sup>12</sup> The Commission must determine to which digital service or services Congress intended must carry requirements to apply, particularly in view of the rapid technological advances since 1992 that now permit delivery of multiplexed SDTV signals, rather than only a single HDTV signal.<sup>13</sup> With use of digital compression and transmission techniques, broadcasters may be able to offer as many as 8 SDTV channels or services over 6 MHz of ATV spectrum.<sup>14</sup> If video delivery systems were required to carry all of those services without charge, capacity on open, common carrier systems<sup>15</sup> would quickly be largely

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<sup>11</sup> Commission's Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, MM Docket No. 87-268 ("NOI") at ¶ 81.

<sup>12</sup> See 47 U.S.C. § 534(b)(4)(B).

<sup>13</sup> Compare, e.g., CATA Comments at 4 ("At the time the Cable Act was passed, 'Advanced Television' was HDTV....Congress could have required simply that stations operating in HDTV format had to be carried. It did not. Rather, it left the Commission with the problem of determining when mandated HDTV carriage would occur and whether, during some transition period, mandated carriage would apply to both NTSC format and HDTV channels.") with Broadcasters' Comments at 31-35 ("...[T]he purpose of requiring the Commission to reassess the must carry issue in light of the ATV transition was to ensure that HDTV signals would be carried 'in accordance with the objectives' of section 614 of the Communications Act.").

<sup>14</sup> Broadcasters' Comments at 33, n. 39.

<sup>15</sup> Broadcasters also request that they be able to maintain their channel position for their signals. Broadcasters' Comments at 34-35. Current FCC rules requiring nondiscriminatory access to common carrier video dialtone platform would have to be amended to permit such favored positioning, absent passage of pending Federal legislation.

filled with must carry channels.<sup>16</sup> Such additional capacity requirements would also raise new constitutional concerns since they would force video delivery system operators to carry much more than the current limited number of channels not of their choosing.

Similarly, the Commission should not require carriage of both NTSC and ATV signals that are simulcast, which would double the number of channels currently eligible for must carry status.<sup>17</sup> Instead, video delivery operators should be able to choose, based on local market conditions, whether to carry one or the other.<sup>18</sup> If sufficient numbers of households have invested in ATV television receivers, the market will dictate that the ATV signal be carried; if not, the NTSC signal should continue to enjoy mandatory carriage in order to avoid disenfranchising those viewers who cannot receive the ATV signal.

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<sup>16</sup> For example, Bell Atlantic believes that as many as 23 existing broadcasters might qualify for must carry status in northern New Jersey under the current must carry rules. If each such broadcaster offered 8 digital services over its ATV spectrum all of which were subject to must carry, 184 of the 383 available channels on Bell Atlantic's video dialtone system in Dover Township, New Jersey would be filled with must carry programming or services. Any public, educational or governmental programming carriage requirements would utilize additional capacity.

<sup>17</sup> Although the Broadcasters assert in one portion of their comments that "the compressed NTSC signal and an HDTV program [can be carried] within a single 6 MHz cable channel," Broadcasters' Comments at 33, n. 39, that argument is wholly inconsistent with their earlier argument that the Commission must allocate an entire 6 MHz of additional spectrum for ATV use because "use of the ATV channel for HDTV transmission,...requires the entire 6 MHz." *Id.* at 10.

<sup>18</sup> See Ameritech Comments at 6.

## **II. Broadcasters Should Pay for That Portion of the Spectrum Used to Provide Services Other Than Free Over-the-Air Programming**

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While the Broadcasters seek flexibility to use any ATV spectrum allocated to them for provision of supplemental and ancillary services, they "do not object to the levy of fees for [such] services that are provided on a subscription basis..."<sup>19</sup> The Broadcasters suggest that one possibility for assessing such fees would be to charge broadcasters a percentage of the revenue they earn from subscription services.<sup>20</sup> While Bell Atlantic takes no position concerning the appropriate fee structure the Commission should adopt, the broadcast industry should pay for spectrum use devoted to services other than free, over-the-air broadcast programming. Such a policy appropriately puts broadcasters on par with other service providers who have paid for spectrum to provide new services, such as those who participated in the recent Personal Communication Services ("PCS") auctions.

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<sup>19</sup> Broadcasters' Comments at 23.

<sup>20</sup> *Id.* It is interesting that Broadcasters also request that any financial data filed in support of such fee assessments be kept confidential, because "disclosure of proprietary information could well derail business plans and inhibit the development of services that the public desires." This is exactly the concern that has prompted Bell Atlantic to urge the Commission to reconsider its current rules requiring telephone companies to put highly proprietary and competitively sensitive cost and pricing information on the public record. See Bell Atlantic's Opposition to Motion for Extension of Time, *Amendment to The Bell Atlantic Tel. Cos. Tariff FCC No. 10: Video Dialtone Service*, Transmittal Nos. 741, 786 Amended, CC Docket No. 95-145 (filed Nov. 22, 1995) at 4-6.

### **III. The Commission Should Carefully Allocate ATV Spectrum in Order to Maximize Later Recovery of Large Contiguous Blocks for Other Uses Nationwide**

The Commission has appropriately proposed to allocate additional spectrum of ATV use on a temporary basis during the transition from NTSC broadcasting, with a requirement that broadcasters must return one of the assigned portions of spectrum at a later date for reallocation to other uses.<sup>21</sup> Recovery of large, contiguous blocks of spectrum in the coming years that are cleared for use nationwide will facilitate availability of new services using scarce spectrum resources. As Motorola suggests, the Commission should now identify contiguous blocks of spectrum for redevelopment within which ATV channel allotments should not be made, in order to minimize problems with interference between services later.<sup>22</sup>

In addition, any costs incurred by ATV broadcasters who may need to relocate at the end of the transition to permit maximum spectrum recovery should be paid from a fund generated from any potential auction of the recovered television spectrum in order to further the important public policy goal of efficient spectrum utilization.<sup>23</sup> Imposing such relocation costs on the successful bidder for the reallocated spectrum would create an additional

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<sup>21</sup> NOI at ¶ 59.

<sup>22</sup> Motorola Comments at 7-8.

<sup>23</sup> Comments of Digital HDTV Grand Alliance, filed Nov. 20, 1995 at 13.



market entry barrier by driving up the potential new entrant's costs, and impede introduction of new services.

#### Conclusion

The Commission should build a full factual record to determine whether must-carry obligations should apply to digital broadcasting, and should ensure that any such obligations apply only to the digital equivalent of the NTSC programming current provided by broadcasters. In addition, the Commission should assess a fee for any portion of the ATV spectrum used to provide services other than free, over-the-air broadcast programming. Finally, the Commission should plan spectrum allotments carefully to maximize spectrum recovery in the future.

Respectfully submitted,



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